

LOCAL LAW NO. 2022 - _____

ALOCAL LAW authorizing the County of Westchester to enter into a third amendment to an intermunicipal agreement with the City of Mount Vernon for the design and construction of improvements to Memorial Field, in order to provide for additional work to be performed by the County due to the unforeseen site conditions and to increase the County's commitment to finance the improvements to a total amount of \$40,899,000.00.

BE IT ENACTED by the County Board of Legislators of the County of Westchester as follows:

Section 1. The County of Westchester (the "County") is hereby authorized to enter into a third amendment to an intermunicipal agreement (the "IMA") with the City of Mt. Vernon (the "City") for the design and construction of improvements to Memorial Field, in order to provide for additional work to be performed by the County due to unforeseen site conditions and increase the County's commitment to finance the improvements to a total amount of \$40,899,000.00.

§2. The third amendment to the IMA shall be substantially similar to the form attached hereto as Schedule A. Except as specifically amended hereby, all terms and conditions set forth in the IMA, as previously amended, shall remain the same.

§3. The County Executive or his authorized designee is empowered to execute any and all documents necessary and appropriate to effectuate the purposes hereof.

§4. This Act shall take effect immediately.

SCHEDULE "A"

THIRD AMENDMENT TO INTERMUNICIPAL AGREEMENT

THIS THIRD AMENDMENT made this day of , 2022 by and

between:

THE COUNTY OF WESTCHESTER, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601 (hereafter the "County")

and

THE CITY OF MOUNT VERNON, a municipal corporation of the State of New York, having an office and place of business located at 1 Roosevelt Square, Mount Vernon, New York 10550 (hereafter the "City")

WITNESSETH:

WHEREAS, on December 24, 2008, the County and the City executed an agreement (the "Agreement") whereby the County agreed to assist in funding certain improvements to City-owned property known as Memorial Field located on Sandford Boulevard in the City and consisting of approximately twelve (12) acres (the "Property"); and

WHEREAS, the improvements to the Property were to include but not be limited to the design, permitting, construction management and construction of an illuminated synthetic turf football/soccer field; a natural turf illuminated soccer field; grandstands for 4,000 people; all-weather track; illuminated basketball court; new buildings to include a ticket booth, concession stand, bathrooms, press box with restroom and elevator, service building and locker rooms; replacement of concrete sidewalk; installation of chain link fencing; and associated infrastructure, site-work and landscaping, and other associated equipment and appurtenances as more particularly described in plans and specifications approved by the County Commissioner of Parks, Recreation and Conservation or the Commissioner's duly authorized designee (the "Project"); and

WHEREAS, pursuant to the Agreement, the City was responsible for completing the improvements in accordance with County-approved plans but has failed to do so; and

WHEREAS, the City constructed tennis courts which encroach on the area where the Project is to be constructed and

WHEREAS, the County paid the City \$3,400,000 comprised of \$1,300,000 for design and \$2,100,000 for 25% of construction, and the City currently holds \$700,000 in County funds; and

WHEREAS, the City permitted construction debris to be dumped on the Property, resulting in a New York State Department of Environmental Conservation (“NYSDEC”) Consent Order requiring the City to remediate; and

WHEREAS, the parties entered into a First Amendment dated December 5, 2018, whereby the County agreed to assume responsibility for constructing the Project after the City has remediated the Property to the full satisfaction of NYSDEC and the County; and

WHEREAS, the parties entered into a Second Amendment dated November 18, 2021, in order to revise the description of the improvements, specify that the term of the agreement will continue until the expiration of any County bonds issued in connection with the improvements, and increase to \$29,602,000.00 the County’s commitment to finance the improvements; and

WHEREAS, the parties desire to further amend the IMA in order to provide for additional work to be performed by the County due to unforeseen site conditions and increase to \$40,899,000.00 the County’s commitment to finance the improvements; and

NOW, THEREFORE, in consideration of the terms and conditions herein contained, the parties agree as follows:

1. The Agreement is amended to provide for additional work to be performed by the County due to unforeseen site conditions including: shallow bedrock which required additional rock drilling; debris and contaminated soil discovered throughout the site, which required proper removal and disposal; and unstable rock slope which required larger than anticipated rock removal to meet a stable rock face for the grandstand foundation. In addition, the project required design changes resulting from the unforeseen site conditions, including changes to the building foundations and a redesign of the drainage system. Further, it became necessary to relocate the scoreboard and its infrastructure to a more visible location than was originally shown on the plans to allow for advertising and income generating potential for the City.

2. The first paragraph of Section 2.2 of the Agreement is deleted and replaced by the following:

In exchange for the Property being open to all County residents, the County agrees to finance the design, permitting, construction management and construction of the Project in a total amount not to exceed FORTY MILLION EIGHT HUNDRED NINETY NINE THOUSAND DOLLARS (\$40,899,000.00). Should the Project costs exceed that amount, the Municipality shall be solely responsible for any additional amount.

3. Section 3.0 of the Agreement is deleted and replaced with the following:

Section 3.0. Subject to the terms and conditions of Section 2.0, the Municipality hereby leases to the County the exclusive right to use and occupy the Property for the purposes of issuing bonds to finance the design and construction of the Project. It is also recognized and understood that the County’s sole responsibility shall be to provide an amount not to exceed FORTY MILLION

EIGHT HUNDRED NINETY NINE THOUSAND DOLLARS (\$40,899,000.00). toward the design and construction of the Project, and the Municipality shall assume all other responsibilities for all other costs and expenses relating to the Project and the Property.

4. Except as otherwise provided herein all other terms and conditions of the Agreement, as amended, shall remain in full force and effect.

5. This Third Amendment shall not be enforceable until signed by both parties and approved by the Office of the County Attorney.

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment on the day and year first above written.

THE COUNTY OF WESTCHESTER

By: _____

CITY OF MOUNT VERNON

By: _____

Authorized and approved by the Westchester County Board of Legislators, at a meeting duly held on the ___ day of _____, 2022 by Local Law No. _____-2022.

Authorized and approved by the City Council of the City of Mount Vernon, at a meeting duly held on the ___ day of _____, 2022.

Approved:

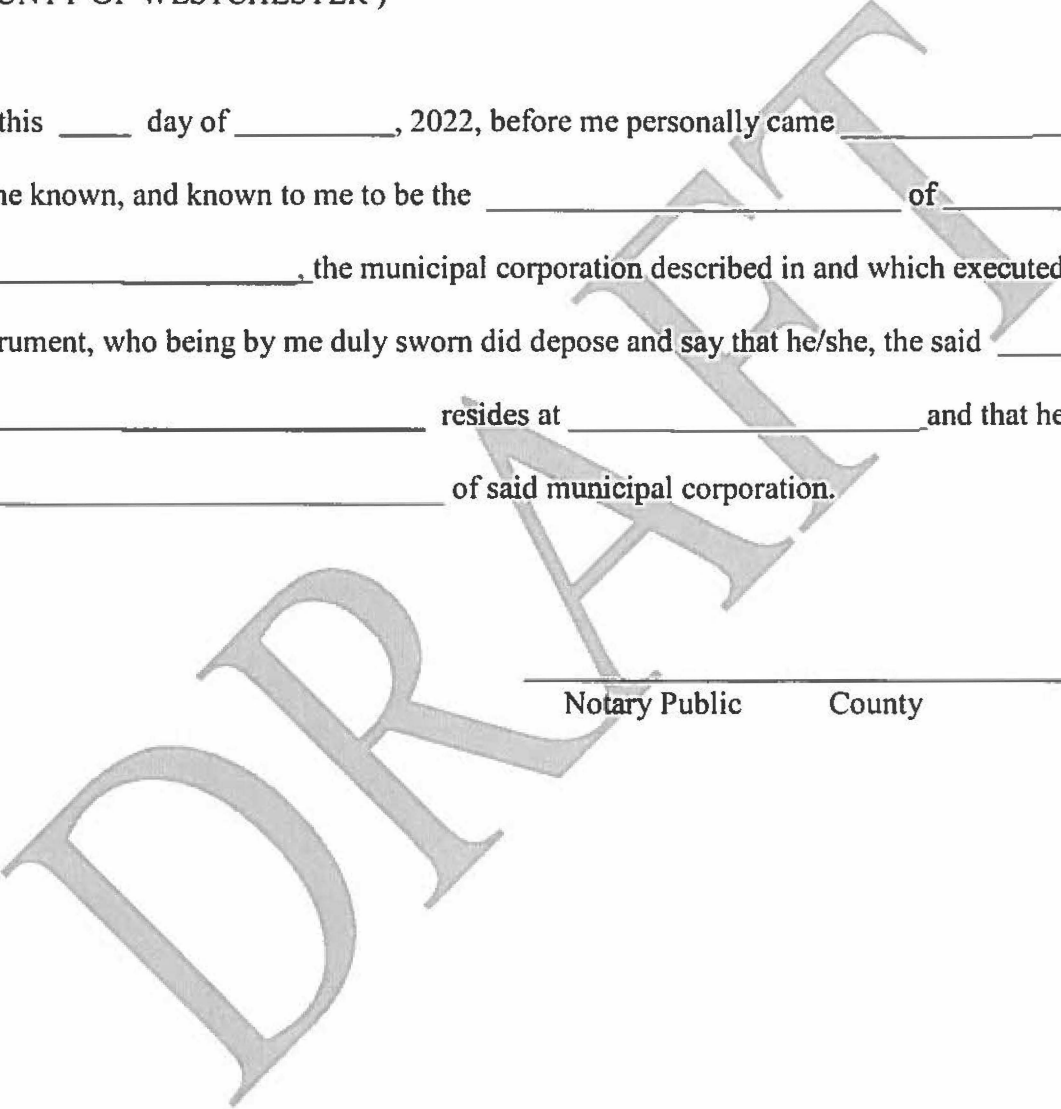
Associate County Attorney
County of Westchester
Vutera/PRC/126229/IMA 3rd amendment Memorial Field 3-16-2022

CITY'S ACKNOWLEDGEMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On this ____ day of _____, 2022, before me personally came _____,
to me known, and known to me to be the _____ of _____
_____, the municipal corporation described in and which executed the within
instrument, who being by me duly sworn did depose and say that he/she, the said _____
_____ resides at _____ and that he/she is the
_____ of said municipal corporation.

Notary Public County



CERTIFICATE OF AUTHORITY

(City)

I, _____, certify that I am the
(Officer other than officer signing contract)

_____ of the _____
(Title) (Name of City)

(the "City") a corporation duly organized in good standing under the _____

_____ *(Law under which organized, e.g., the New York Village Law, Town Law, General Municipal Law)*

named in the foregoing agreement that _____ who signed said
(Person executing agreement)

agreement on behalf of the City was, at the time of execution _____ of
(Title of such person),

the City, that said agreement was duly signed for on behalf of said City by

authority of its _____ thereunto duly authorized,
(Town Board, Village Board, City Council)

and that such authority is in full force and effect at the date hereof.

(Signature)

STATE OF NEW YORK)

ss.:

COUNTY OF WESTCHESTER)

On this ___ day of _____, 2022, before me personally came _____
_____ whose signature appears above, to me known, and know to be the
_____ of _____,

(Title)

the municipal corporation described in and which executed the above certificate, who being by
me duly sworn did depose and say that he, the said _____

resides at _____, and that

he/she is the _____ of said municipal corporation.

(Title)

Notary Public County